

34A-6-101. Title.

This chapter is known as the "Utah Occupational Safety and Health Act."

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-102. Legislative intent.

The intent of this chapter is:

- (1) to preserve human resources by providing for the safety and health of workers; and
- (2) to provide a coordinated state plan to implement, establish, and enforce occupational safety and health standards as effective as the standards under the Williams-Steiger Occupational Safety and Health Act of 1970, 29 U.S.C. Sec. 651 et seq.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-103. Definitions -- Unincorporated entities.

- (1) As used in this chapter:
 - (a) "Administrator" means the director of the Division of Occupational Safety and Health.
 - (b) "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.
 - (c) "Commission" means the Labor Commission.
 - (d) "Division" means the Division of Occupational Safety and Health.
 - (e) "Employee" includes any person suffered or permitted to work by an employer.
 - (f) "Employer" means:
 - (i) the state;
 - (ii) a county, city, town, and school district in the state; and
 - (iii) a person, including a public utility, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.
 - (g) "Hearing" means a proceeding conducted by the commission.
 - (h) "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.
 - (i) "National consensus standard" means any occupational safety and health standard or modification:
 - (i) adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;
 - (ii) formulated in a manner which affords an opportunity for diverse views to be considered; and
 - (iii) designated as such a standard by the Secretary of the United States

Department of Labor.

(j) "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

(k) "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(l) "Secretary" means the Secretary of the United States Department of Labor.

(m) "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

(n) "Unincorporated entity" means an entity organized or doing business in the state that is not:

(i) an individual;

(ii) a corporation; or

(iii) publicly traded.

(o) "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

(p) "Workplace" means any place of employment.

(2) (a) For purposes of this chapter, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who, directly or indirectly, holds an ownership interest in the unincorporated entity.

(b) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (2)(a) for an individual by establishing by clear and convincing evidence that the individual:

(i) is an active manager of the unincorporated entity;

(ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or

(iii) is not subject to supervision or control in the performance of work by:

(A) the unincorporated entity; or

(B) a person with whom the unincorporated entity contracts.

(c) As part of the rules made under Subsection (2)(b), the commission may define:

(i) "active manager";

(ii) "directly or indirectly holds at least an 8% ownership interest"; and

(iii) "subject to supervision or control in the performance of work."

Amended by Chapter 413, 2013 General Session

34A-6-104. Administration of chapter -- Selection of administrator -- Powers and duties of commission -- Application of chapter and exceptions.

(1) Administration of this chapter is vested in the commission and the division. The commission:

(a) is vested with jurisdiction and supervision over every workplace in this state and is empowered to administer all laws and lawful orders to ensure that every employee in this state has a workplace free of recognized hazards;

(b) through the administrator, shall carry out the state plan and this chapter, provided that the administrator is a person with at least five years experience or training in the field of industrial safety and health;

(c) shall make, establish, promulgate and enforce all necessary and reasonable rules and provisions to carry this chapter into effect except when the division is authorized by this chapter to make rules; and

(d) may in its discretion administer oaths, take depositions, subpoena witnesses, compel production of documents, books, and accounts in any inquiry, investigation, hearing, or proceeding in any part of this state.

(2) This chapter shall apply to all workplaces in the state except that nothing in this chapter shall apply to:

(a) working conditions of employees with respect to which federal agencies and other state agencies acting under section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2021, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health; or

(b) any workplace or employer not subject to the provisions of the federal Williams-Steiger Occupational Safety and Health Act of 1970 and any amendments to that act or any regulations promulgated under that act.

Amended by Chapter 13, 1998 General Session

34A-6-105. Procedures -- Adjudicative proceedings.

The commission, the division, and the administrator shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in any adjudicative proceedings that they conduct under this chapter.

Amended by Chapter 382, 2008 General Session

34A-6-107. Research and related activities.

(1) (a) The division, after consultation with other appropriate agencies, shall conduct, directly or by grants or contracts, whether federal or otherwise, research, experiments, and demonstrations in the area of occupational safety and health, including studies of psychological factors involved in innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(b) (i) The division, to comply with its responsibilities under this section, and to develop needed information regarding toxic substances or harmful physical agents, may make rules requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents reasonably believed to endanger the health or safety of employees.

(ii) The division may establish programs for medical examinations and tests necessary for determining the incidence of occupational diseases and the susceptibility of employees to the diseases.

(iii) Nothing in this chapter authorizes or requires a medical examination,

immunization, or treatment for persons who object on religious grounds, except when necessary for the protection of the health or safety of others.

(iv) Any employer who is required to measure and record employee exposure to substances or physical agents as provided under Subsection (1)(b) may receive full or partial financial or other assistance to defray additional expense incurred by measuring and recording as provided in this Subsection (1)(b).

(c) (i) Following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, the division shall determine whether any substance normally found in a workplace has toxic effects in the concentrations used or found, and shall submit its determination both to employers and affected employees as soon as possible.

(ii) The division shall immediately take action necessary under Section 34A-6-202 or 34A-6-305 if the division determines that:

(A) any substance is toxic at the concentrations used or found in a workplace; and

(B) the substance is not covered by an occupational safety or health standard promulgated under Section 34A-6-202.

(2) The division may inspect and question employers and employees as provided in Section 34A-6-301, to carry out its functions and responsibilities under this section.

(3) The division is authorized to enter into contracts, agreements, or other arrangements with appropriate federal or state agencies, or private organizations to conduct studies about its responsibilities under this chapter. In carrying out its responsibilities under this subsection, the division shall cooperate with the Department of Health and the Department of Environmental Quality to avoid any duplication of efforts under this section.

(4) Information obtained by the division under this section shall be disseminated to employers and employees and organizations of them.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-108. Collection, compilation, and analysis of statistics.

(1) The division shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The program may cover all employments whether subject to this chapter but may not cover employments excluded by Subsection 34A-6-104(2). The division shall compile accurate statistics on work injuries and occupational diseases.

(2) The division may use the functions imposed by Subsection (1) to:

(a) promote, encourage, or directly engage in programs of studies, information, and communication concerning occupational safety and health statistics;

(b) assist agencies or political subdivisions in developing and administering programs dealing with occupational safety and health statistics; and

(c) arrange, through assistance, for the conduct of research and investigations which give promise of furthering the objectives of this section.

(3) The division may, with the consent of any state agency or political subdivision of the state, accept and use the services, facilities, and employees of state

agencies or political subdivisions of the state, with or without reimbursement, to assist it in carrying out its functions under this section.

(4) On the basis of the records made and kept under Subsection 34A-6-301(3), employers shall file reports with the division in the form and manner prescribed by the division.

(5) Agreements between the United States Department of Labor and Utah pertaining to the collection of occupational safety and health statistics already in effect on July 1, 1973, remain in effect until superseded.

Amended by Chapter 297, 2011 General Session

34A-6-109. Educational and training programs.

(1) The division, after consultation with other appropriate agencies, shall conduct, directly or by assistance:

(a) educational programs to provide an adequate supply of qualified personnel to carry out the purpose of this chapter; and

(b) informational programs on the importance of adequate safety and health equipment.

(2) The division is authorized to conduct, directly or by assistance, training for personnel engaged in work related to its responsibilities under this chapter.

(3) The division shall:

(a) establish and supervise programs for the education and training of employers and employees for recognition, avoidance, and prevention of unsafe or unhealthful working conditions;

(b) consult and advise employers and employees about effective means for prevention of any work-related injury or occupational disease; and

(c) provide safety and health workplace surveys.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-110. Requirements of other laws not limited or repealed -- Worker's compensation or rights under other laws with respect to employment injuries not affected.

(1) Nothing in this chapter is deemed to limit or repeal requirements imposed by statute or otherwise recognized by law.

(2) Nothing in this chapter shall be construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of employment.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-111. Federal aid.

The commission may make application for, receive, administer, and expend any federal aid for the administration of any of the provisions of this chapter.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-201. Duties of employers and employees.

(1) Each employer shall furnish each of the employer's employees employment and a place of employment free from recognized hazards that are causing or are likely to cause death or physical harm to the employer's employees and comply with the standards promulgated under this chapter.

(2) Each employee shall comply with the occupational safety and health standards, orders, and rules made under this chapter.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-202. Standards -- Procedure for issuance, modification, or revocation by division -- Emergency temporary standard -- Variances from standards -- Statement of reasons for administrator's actions -- Judicial review -- Priority for establishing standards.

(1) (a) The division, as soon as practicable, shall issue as standards any national consensus standard, any adopted federal standard, or any adopted Utah standard, unless it determines that issuance of the standard would not result in improved safety or health.

(b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30 days after publication unless otherwise specified.

(c) If any conflict exists between standards, the division shall issue the standard that assures the greatest protection of safety or health for affected employees.

(2) The division may issue, modify, or revoke any standard as follows:

(a) The division shall publish a proposed rule issuing, modifying, or revoking an occupational safety or health standard and shall afford interested parties an opportunity to submit written data or comments as prescribed by Title 63G, Chapter 3, Utah Administrative Rulemaking Act. When the administrator determines that a rule should be issued, the division shall publish the proposed rule after the expiration of the period prescribed by the administrator for submission.

(b) The administrator, in issuing standards for toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard during an employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and other information deemed appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience under this and other health and safety laws. Whenever practicable, the standard shall be expressed in terms of objective criteria and of the performance desired.

(c) (i) Any employer may apply to the administrator for a temporary order granting a variance from a standard issued under this section. Temporary orders shall

be granted only if the employer:

(A) files an application which meets the requirements of Subsection (2)(c)(iv);
(B) establishes that the employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed for compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(C) establishes that the employer is taking all available steps to safeguard the employer's employees against hazards; and

(D) establishes that the employer has an effective program for compliance as quickly as practicable.

(ii) Any temporary order shall prescribe the practices, means, methods, operations, and processes which the employer shall adopt and use while the order is in effect and state in detail the employer's program for compliance with the standard. A temporary order may be granted only after notice to employees and an opportunity for a public hearing; provided, that the administrator may issue one interim order effective until a decision is made after public hearing.

(iii) A temporary order may not be in effect longer than the period reasonably required by the employer to achieve compliance. In no case shall the period of a temporary order exceed one year.

(iv) An application for a temporary order under Subsection (2)(c) shall contain:

(A) a specification of the standard or part from which the employer seeks a variance;

(B) a representation by the employer, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the employer is unable to comply with the standard or some part of the standard;

(C) a detailed statement of the reasons the employer is unable to comply;

(D) a statement of the measures taken and anticipated with specific dates, to protect employees against the hazard;

(E) a statement of when the employer expects to comply with the standard and what measures the employer has taken and those anticipated, giving specific dates for compliance; and

(F) a certification that the employer has informed the employer's employees of the application by:

(I) giving a copy to their authorized representative;

(II) posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted; and

(III) by other appropriate means.

(v) The certification required under Subsection (2)(c)(iv) shall contain a description of how employees have been informed.

(vi) The information to employees required under Subsection (2)(c)(v) shall inform the employees of their right to petition the division for a hearing.

(vii) The administrator is authorized to grant a variance from any standard or some part of the standard when the administrator determines that it is necessary to permit an employer to participate in a research and development project approved by

the administrator to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(d) (i) Any standard issued under this subsection shall prescribe the use of labels or other forms of warning necessary to ensure that employees are apprised of all hazards, relevant symptoms and emergency treatment, and proper conditions and precautions of safe use or exposure. When appropriate, a standard shall prescribe suitable protective equipment and control or technological procedures for use in connection with such hazards and provide for monitoring or measuring employee exposure at such locations and intervals, and in a manner necessary for the protection of employees. In addition, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available by the employer, or at the employer's cost, to employees exposed to hazards in order to most effectively determine whether the health of employees is adversely affected by exposure. If medical examinations are in the nature of research as determined by the division, the examinations may be furnished at division expense. The results of such examinations or tests shall be furnished only to the division; and, at the request of the employee, to the employee's physician.

(ii) The administrator may by rule make appropriate modifications in requirements for the use of labels or other forms of warning, monitoring or measuring, and medical examinations warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(e) Whenever a rule issued by the administrator differs substantially from an existing national consensus standard, the division shall publish a statement of the reasons why the rule as adopted will better effectuate the purposes of this chapter than the national consensus standard.

(f) Whenever a rule, standard, or national consensus standard is modified by the secretary so as to make less restrictive the federal Williams-Steiger Occupational Safety and Health Act of 1970, the less restrictive modification shall be immediately applicable to this chapter and shall be immediately implemented by the division.

(3) (a) The administrator shall provide an emergency temporary standard to take immediate effect upon publication if the administrator determines that:

(i) employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and

(ii) that the standard is necessary to protect employees from danger.

(b) An emergency standard shall be effective until superseded by a standard issued in accordance with the procedures prescribed in Subsection (3)(c).

(c) Upon publication of an emergency standard the division shall commence a proceeding in accordance with Subsection (2) and the standard as published shall serve as a proposed rule for the proceedings. The division shall issue a standard under Subsection (3) no later than 120 days after publication of the emergency standard.

(4) (a) Any affected employer may apply to the division for a rule or order for a variance from a standard issued under this section. Affected employees shall be given notice of each application and may participate in a hearing. The administrator shall issue a rule or order if the administrator determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has

demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and a workplace to the employer's employees that are as safe and healthful as those which would prevail if the employer complied with the standard.

(b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations and processes that the employer must adopt and use to the extent they differ from the standard in question.

(c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon application by an employer, employees, or by the administrator on its own motion, in the manner prescribed for its issuance under Subsection (4) at any time after six months from its issuance.

(5) The administrator shall include a statement of reasons for the administrator's actions when the administrator:

- (a) issues any code, standard, rule, or order;
- (b) grants any exemption or extension of time; or
- (c) compromises, mitigates, or settles any penalty assessed under this chapter.

(6) Any person adversely affected by a standard issued under this section, at any time prior to 60 days after a standard is issued, may file a petition challenging its validity with the district court having jurisdiction for judicial review. A copy of the petition shall be served upon the division by the petitioner. The filing of a petition may not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the division shall be conclusive if supported by substantial evidence on the record as a whole.

(7) In determining the priority for establishing standards under this section, the division shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The administrator shall also give due regard to the recommendations of the Department of Health about the need for mandatory standards in determining the priority for establishing the standards.

Amended by Chapter 413, 2013 General Session

34A-6-203. Discharge or discrimination against employee prohibited.

(1) A person may not discharge or in any manner discriminate against any employee because:

- (a) the employee has filed any complaint or instituted or caused to be instituted any proceedings under or related to this chapter;
- (b) the employee has testified or is about to testify in any proceeding; or
- (c) the employee has exercised any right granted by this chapter on behalf of the employee or others.

(2) (a) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of this section may, within 30 days after the violation occurs, file a complaint with the division in the commission alleging discrimination.

(b) (i) Upon receipt of the complaint, the division shall cause an investigation to be made.

(ii) The division may employ investigators as necessary to carry out the purpose of this Subsection (2).

(c) If the investigator reports a violation and the employer requests a hearing on the alleged violation, the Division of Adjudication shall hold an evidentiary hearing to determine if provisions of this section have been violated.

(d) (i) If the Division of Adjudication determines that a violation has occurred, it may order:

(A) the violation to be restrained; and

(B) all appropriate relief, including reinstatement of the employee to the employee's former position with back pay.

(ii) A determination under this Subsection (2)(d) may be appealed in accordance with Section 34A-6-304.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-204. State agencies and political subdivisions to establish programs.

The head of each state agency and each political subdivision of the state shall establish and maintain an occupational safety and health program equivalent to the program for other employments in the state. The commission may not assess monetary penalties against any state agency or political subdivision under Section 34A-6-307.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-301. Inspection and investigation of workplace, worker injury, illness, or complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers -- Employer and employee representatives -- Request for inspection -- Compilation and publication of reports and information -- Rules.

(1) (a) The division or its representatives, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(i) enter without delay at reasonable times any workplace where work is performed by an employee of an employer;

(ii) inspect and investigate during regular working hours and at other reasonable times in a reasonable manner any workplace, worker injury, occupational disease, or complaint and all pertinent methods, operations, processes, conditions, structures, machines, apparatus, devices, equipment, and materials in the workplace; and

(iii) question privately any such employer, owner, operator, agent, or employee.

(b) The division, upon an employer's refusal to permit an inspection, may seek a warrant pursuant to the Utah Rules of Criminal Procedure.

(2) (a) The division or its representatives may require the attendance and testimony of witnesses and the production of evidence under oath.

(b) Witnesses shall receive fees and mileage in accordance with Section 78B-1-119.

(c) (i) If any person fails or refuses to obey an order of the division to appear, any district court within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the division, shall have jurisdiction to issue to any person an order requiring that person to:

(A) appear to produce evidence if, as, and when so ordered; and

(B) give testimony relating to the matter under investigation or in question.

(ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be punished by the court as a contempt.

(3) (a) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers:

(i) to keep records regarding activities related to this chapter considered necessary for enforcement or for the development of information about the causes and prevention of occupational accidents and diseases; and

(ii) through posting of notices or other means, to inform employees of their rights and obligations under this chapter including applicable standards.

(b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding any work-related death and injury and any occupational disease as provided in this Subsection (3)(b).

(i) Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

(ii) Each employer shall, within eight hours of occurrence, notify the division of any:

(A) work-related fatality;

(B) disabling, serious, or significant injury; or

(C) occupational disease incident.

(iii) (A) Each employer shall file a report with the Division of Industrial Accidents in accordance with Sections 34A-2-407 and 34A-3-108, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, in the form prescribed by the Division of Industrial Accidents, of any work-related fatality or any work-related injury or occupational disease resulting in:

(I) medical treatment;

(II) loss of consciousness;

(III) loss of work;

(IV) restriction of work; or

(V) transfer to another job.

(B) (I) Each employer shall file a subsequent report with the Division of Industrial Accidents of any previously reported injury or occupational disease that later resulted in death.

(II) The subsequent report shall be filed with the Division of Industrial Accidents in accordance with Sections 34A-2-407 and 34A-3-108.

(iv) A report is not required for minor injuries, such as cuts or scratches that require first aid treatment only, unless a treating physician files, or is required to file, the Physician's Initial Report of Work Injury or Occupational Disease with the Division of Industrial Accidents.

(v) A report is not required:
(A) for occupational diseases that manifest after the employee is no longer employed by the employer with which the exposure occurred; or

(B) where the employer is not aware of an exposure occasioned by the employment which results in a compensable occupational disease as defined by Section 34A-3-103.

(vi) Each employer shall provide the employee with:

(A) a copy of the report submitted to the Division of Industrial Accidents; and

(B) a statement, as prepared by the Division of Industrial Accidents, of the employee's rights and responsibilities related to the industrial injury or occupational disease.

(vii) Each employer shall maintain a record in a manner prescribed by the commission of all work-related fatalities or work-related injuries and of all occupational diseases resulting in:

(A) medical treatment;

(B) loss of consciousness;

(C) loss of work;

(D) restriction of work; or

(E) transfer to another job.

(viii) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally recognized rules or standards on the reporting and recording of work-related injuries and occupational diseases.

(c) (i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records regarding exposures to potentially toxic materials or harmful physical agents required to be measured or monitored under Section 34A-6-202.

(ii) (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their representatives:

(I) to observe the measuring or monitoring; and

(II) to have access to the records of the measuring or monitoring, and to records that indicate their exposure to toxic materials or harmful agents.

(B) Each employer shall promptly notify employees being exposed to toxic materials or harmful agents in concentrations that exceed prescribed levels and inform any such employee of the corrective action being taken.

(4) Information obtained by the division shall be obtained with a minimum burden upon employers, especially those operating small businesses.

(5) A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the division's authorized representative during the physical inspection of any workplace. If there is no authorized employee representative, the division's authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(6) (a) (i) (A) Any employee or representative of employees who believes that a violation of an adopted safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the

division's authorized representative of the violation or danger. The notice shall be:

(I) in writing, setting forth with reasonable particularity the grounds for notice;
and

(II) signed by the employee or representative of employees.

(B) A copy of the notice shall be provided the employer or the employer's agent no later than at the time of inspection.

(C) Upon request of the person giving notice, the person's name and the names of individual employees referred to in the notice may not appear in the copy or on any record published, released, or made available pursuant to Subsection (7).

(ii) (A) If upon receipt of the notice the division's authorized representative determines there are reasonable grounds to believe that a violation or danger exists, the authorized representative shall make a special inspection in accordance with this section as soon as practicable to determine if a violation or danger exists.

(B) If the division's authorized representative determines there are no reasonable grounds to believe that a violation or danger exists, the authorized representative shall notify the employee or representative of the employees in writing of that determination.

(b) (i) Prior to or during any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the division or its representative of any violation of a standard that they have reason to believe exists in the workplace.

(ii) The division shall:

(A) by rule, establish procedures for informal review of any refusal by a representative of the division to issue a citation with respect to any alleged violation;
and

(B) furnish the employees or representative of employees requesting review a written statement of the reasons for the division's final disposition of the case.

(7) (a) The division may compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section, subject to the limitations set forth in Section 34A-6-306.

(b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter, including rules for information obtained under this section, subject to the limitations set forth in Section 34A-6-306.

(8) Any employer who refuses or neglects to make reports, to maintain records, or to file reports with the commission as required by this section is guilty of a class C misdemeanor and subject to citation under Section 34A-6-302 and a civil assessment as provided under Section 34A-6-307, unless the commission finds that the employer has shown good cause for submitting a report later than required by this section.

Amended by Chapter 72, 2013 General Session

34A-6-302. Citations issued by division -- Grounds -- Posting -- Limitation.

(1) (a) If upon inspection or investigation, the division or its authorized representative believes that an employer has violated a requirement of Section 34A-6-201, of any standard, rule, or order issued under Section 34A-6-202, or any rules

under this chapter, it shall with reasonable promptness issue a citation to the employer.

(b) Each citation shall:

(i) be in writing; and

(ii) describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rule, or order alleged to have been violated.

(c) The citation shall fix a reasonable time for the abatement of the violation. In the case of a review proceeding initiated by the employer in good faith, not for the purpose of delay or avoidance of the penalties, the time for abatement begins to run on the date of the final order of the commission.

(d) The commission may prescribe procedures for the issuance of a notice in lieu of a citation with respect to violations that have no direct or immediate relationship to safety or health.

(2) Each citation issued under this section or a copy shall be prominently posted by the employer, as required by rule, at or near each place a violation referred to in the citation occurred.

(3) A citation may not be issued under this section after the expiration of six months following the occurrence of any violation.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-303. Enforcement procedures -- Notification to employer of proposed assessment -- Notification to employer of failure to correct violation -- Contest by employer of citation or proposed assessment -- Procedure.

(1) (a) If the division issues a citation under Subsection 34A-6-302(1), it shall within a reasonable time after inspection or investigation, notify the employer by certified mail of the assessment, if any, proposed to be assessed under Section 34A-6-307 and that the employer has 30 days to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment.

(b) If, within 30 days from the receipt of the notice issued by the division, the employer fails to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment, and no notice is filed by any employee or representative of employees under Subsection (3) within 30 days, the citation, abatement, and assessment, as proposed, is final and not subject to review by any court or agency.

(2) (a) If the division has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the time period permitted, the division shall notify the employer by certified mail:

(i) of the failure;

(ii) of the assessment proposed to be assessed under Section 34A-6-307; and

(iii) that the employer has 30 days to notify the Division of Adjudication that the employer intends to contest the division's notification or the proposed assessment.

(b) The period for corrective action does not begin to run until entry of a final order by the commission.

(c) If the employer fails to notify the Division of Adjudication, in writing, within 30 days from the receipt of notification issued by the division, that the employer intends to contest the notification or proposed assessment, the notification and assessment, as

proposed, is final and not subject to review by any court or agency.

(3) (a) If an employer notifies the Division of Adjudication that the employer intends to contest a citation issued under Subsection 34A-6-302(1), or notification issued under Subsection (1) or (2), or if, within 30 days of the issuance of a citation under Subsection 34A-6-302(1), any employee or representative of employees files a notice with the division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the division shall advise the commissioner of the notification, and the commissioner shall provide an opportunity for a hearing.

(b) Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that the abatement has not been completed because of factors beyond the employer's reasonable control, the division, after an opportunity for discussion and consideration, shall issue an order affirming or modifying the abatement requirements in any citation.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-304. Procedure for review of order entered by administrative law judge -- Continuing jurisdiction of commission.

(1) (a) Administrative law judges assigned by the director of the Division of Adjudication shall hear and determine any proceeding assigned to them by the Division of Adjudication.

(b) The administrative law judge shall enter the administrative law judge's findings of fact, conclusions of law, and order not later than 30 days after final receipt of all matters concerned in the hearing.

(c) The findings of fact, conclusions of law, and order of the administrative law judge shall become the final order of the commission unless objections are made in accordance with Subsection (2).

(2) (a) Any party of interest who is dissatisfied with the order entered by an administrative law judge may obtain a review by appealing the decision in accordance with Section 63G-4-301 and Chapter 1, Part 3, Adjudicative Proceedings.

(b) The commissioner or Appeals Board shall make its decision in accordance with Section 34A-1-303.

(c) The decision of the commission is final unless judicial review is requested in accordance with Chapter 1, Part 3, Adjudicative Proceedings.

(d) To the extent that new facts are provided, the commission has continuing jurisdiction to amend, reverse, or enhance prior orders.

Amended by Chapter 382, 2008 General Session

34A-6-305. Injunction proceedings.

(1) The district courts shall have jurisdiction, upon petition of the administrator to restrain any conditions or practices in any place of employment where danger exists which could reasonably be expected to cause death or physical harm immediately or before the imminence of such danger can be eliminated through enforcement procedures provided by this chapter. Any order issued under this section may require that necessary steps be taken to avoid, correct, or remove imminent danger or prohibit

the employment or presence of any individual in locations or under conditions where imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove imminent danger or maintain the capacity of a continuous process operation so that normal operations can be resumed without a complete cessation of operations, or where cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(2) The district courts shall have jurisdiction upon petition to grant injunctive relief or temporary restraining orders pending the outcome of any enforcement proceeding pursuant to this act pursuant to Rule 65A, Utah Rules of Civil Procedure; provided, that no temporary restraining order issued without notice shall be effective for more than five days.

(3) Whenever an inspector concludes that imminent danger exists in any place of employment, the inspector shall inform the affected employees and employers of the danger and that the inspector is recommending to the administrator that relief be sought.

(4) If the administrator arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the administrator in the district court of the county in which the imminent danger is alleged to exist or the employer has its principal office, for a writ of mandamus and for further appropriate relief.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-306. Disclosure of trade secrets -- Protective orders.

(1) All information reported to or otherwise obtained by the administrator or the administrator's representatives or any employee in connection with any inspection or proceeding under this chapter which contains or which might reveal a trade secret shall be considered confidential except that the information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant, in any proceeding under this chapter.

(2) In any such proceeding, the commission or the court shall issue appropriate orders to protect the trade secret.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-6-307. Civil and criminal penalties.

(1) The commission may assess civil penalties against any employer who has received a citation under Section 34A-6-302 as follows:

(a) Except as provided in Subsections (1)(b) through (d), the commission may assess up to \$7,000 for each cited violation.

(b) The commission may not assess less than \$250 nor more than \$7,000 for each cited serious violation. A violation is serious only if:

(i) it arises from a condition, practice, method, operation, or process in the workplace of which the employer knows or should know through the exercise of reasonable diligence; and

(ii) there is a substantial possibility that the condition, practice, method, operation, or process could result in death or serious physical harm.

(c) The commission may not assess less than \$5,000 nor more than \$70,000 for each cited willful violation.

(d) The commission may assess up to \$70,000 for each cited violation if the employer has previously been found to have violated the same standards, code, rule, or order.

(e) After the expiration of the time permitted to an employer to correct a cited violation, the commission may assess up to \$7,000 for each day the violation continues uncorrected.

(2) The commission may assess a civil penalty of up to \$7,000 for each violation of any posting requirement under this chapter.

(3) In deciding the amount to assess for a civil penalty, the commission shall consider all relevant factors, including:

(a) the size of the employer's business;

(b) the nature of the violation;

(c) the employer's good faith or lack of good faith; and

(d) the employer's previous record of compliance or noncompliance with this chapter.

(4) Any civil penalty collected under this chapter shall be paid into the General Fund.

(5) Criminal penalties under this chapter are as follows:

(a) Any employer who willfully violates any standard, code, rule, or order issued under Section 34A-6-202, or any rule made under this chapter, is guilty of a class A misdemeanor if the violation caused the death of an employee. If the violation causes the death of more than one employee, each death is considered a separate offense.

(b) Any person who gives advance notice of any inspection conducted under this chapter without authority from the administrator or the administrator's representatives is guilty of a class A misdemeanor.

(c) Any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter is guilty of a class A misdemeanor.

(6) After a citation issued under this chapter and an opportunity for a hearing under Title 63G, Chapter 4, Administrative Procedures Act, the division may file an abstract for any uncollected citation penalty in the district court. The filed abstract shall have the effect of a judgment of that court. The abstract shall state the amount of the uncollected citation penalty, reasonable attorneys' fees as set by commission rule, and court costs.

Amended by Chapter 382, 2008 General Session